

1 JUDGE SIPPEL: Let's go.

2 THE WITNESS: Okay.

3 BY MR. KIRK:

4 Q If you can go back to Comcast  
5 Exhibit 91.

6 A Is that the one I hadn't seen  
7 before?

8 Q Correct. Would this be one of  
9 those type of lists, someone keeping a list of  
10 what systems are in their territory that they  
11 may not have carriage on?

12 A Yeah, something like this, I could  
13 see -- yeah, there would be a master list like  
14 this. I could see this, yeah.

15 Q Did MASN affiliate sales force  
16 compile that type of list?

17 A I don't know the answer to that.

18 Q Would that have been helpful for  
19 purposes of negotiating this agreement?

20 A Well, I'm not sure. I think what  
21 we said to Comcast was, "We want all your  
22 systems", so --

1           Q       And they extracted the word "all",  
2     correct?

3           A       But they indicated to us that they  
4     were giving us all.

5           Q       In writing?

6           A       Except for the 150,000 Adelphia  
7     subscriber systems.

8           Q       In writing?

9           A       I'm not sure how to answer that.  
10    The contract says what it says.

11          Q       In paragraph 26 of your testimony  
12    you indicate, "The total number of subscribers  
13    on the list compared favorably to MASN's own  
14    internal estimates".

15          A       Yes.

16          Q       How were those estimates derived?

17          A       They were created by Bortz and  
18    Associates and I don't know exactly what --  
19    how they -- I don't recall how they got to  
20    those numbers.

21          Q       When you first learned that more  
22    than 150,000 subscribers were not covered by

1     this agreement, did you state that, "That  
2     provides MASN with an opportunity to acquire  
3     additional subscribers above and beyond  
4     projections"?

5           A       Well, when we learned that there -  
6     - I want to make sure I understand what you're  
7     asking. When we learned that there were  
8     systems that hadn't launched that we thought  
9     were supposed to launch, I did sent that e-  
10    mail to Davida Shear that you're referring to.

11          Q       Saying there was an opportunity to  
12    acquire additional subscribers above and  
13    beyond projections, correct?

14          A       That's correct.

15          Q       Why did you not state that Comcast  
16    was obligated to carry those?

17          A       Because I thought what she was  
18    referring to were Adelphia systems and I  
19    thought it was 150,000 subscribers. I think  
20    elsewhere in that e-mail or other e-mails I  
21    mention that that number is higher than what  
22    we thought it was supposed to be. We thought

1 it was 150,000 subscribers that weren't  
2 supposed to be launched. The number I think  
3 originally that was bandied about was like 270  
4 something thousand. So what I was referring  
5 to -- what I was saying to Davida was, this is  
6 an opportunity to go out and get those  
7 Adelphia systems signed up now if you can.

8 Q But you didn't say it's more than  
9 150,000 that have to be covered by the  
10 agreement. You said it was an opportunity.

11 A I said it was an opportunity,  
12 yeah, I thought it was an opportunity to go  
13 get those 150,000 subscribers.

14 MR. KIRK: I'd like to introduce  
15 this document, Exhibit 95. I do not believe  
16 this has been introduced into evidence yet.

17 (The document referred to was  
18 marked as Comcast Exhibit Number  
19 95 for identification.)

20 JUDGE SIPPEL: Would that be  
21 something in the nature of a hunting license  
22 for those --

1 THE WITNESS: For those 150,000,  
2 yes.

3 BY MR. KIRK:

4 Q So I think what you were referring  
5 to in this e-mail is midway in the first  
6 paragraph you indicate that -- I'm going to  
7 try and be a little bit vague.

8 A Maybe I'll be vague in my answer.

9 Q There were hundreds of thousands  
10 of subscribers that were excluded from the  
11 agreement; is that correct, in the  
12 parenthetical? We're trying to avoid using  
13 specific numbers.

14 A Oh, yeah.

15 Q So is it correct to say that that  
16 parenthetical indicates there's hundreds of  
17 thousands of subscribers?

18 A Can I say that it was less than a  
19 certain amount more than another? I mean,  
20 hundreds of thousands sounds like a lot but,  
21 okay, yes.

22 Q Was it less than [REDACTED]

1 subscribers?

2 A Yes, yes, in this e-mail.

3 MR. KIM: Your Honor, just so the  
4 record is clear, I don't think there's anyone  
5 in the courtroom that's not bound by the  
6 protective order, so you know, we can redact  
7 the numbers later from the public record.

8 THE WITNESS: I think I already  
9 said the number, too.

10 MR. KIRK: That's fine.

11 JUDGE SIPPEL: That number sounds -  
12 - are you talking about the first paragraph?

13 MR. KIRK: [REDACTED].

14 THE WITNESS: Which is the one I  
15 testified to about 10 minutes ago.

16 JUDGE SIPPEL: Yeah, you did, you  
17 did.

18 BY MR. KIRK:

19 Q So the [REDACTED] subscribers that  
20 you've now learned were excluded, are you  
21 expressing shock in this e-mail?

22 A Yeah, well, I said I don't recall

1     that being the number. I said it's more like  
2     150.

3             Q       But you indicated it's an  
4     opportunity not that there's a problem,  
5     correct?

6             A       Yeah, sure.

7             MR. KIM: Yeah, we don't object if  
8     this goes into evidence.

9             JUDGE SIPPEL: Can we just -- can  
10    we just take the --

11            MR. KIRK: It represents subscriber  
12    numbers so that might be the difficulty, your  
13    Honor.

14            MR. KIM: I certainly could offer a  
15    redacted version, your Honor. I'd like to  
16    maintain the confidentiality. I have no  
17    objection to it being received.

18            JUDGE SIPPEL: All right, thank  
19    you.

20            MR. KIM: You're welcome.

21            JUDGE SIPPEL: We don't have -- is  
22    this in or out yet? Do we have this? It's

1 marked as 95 but it has not been received yet?

2 MR. KIRK: It's not been received.

3 I'd like to move to --

4 JUDGE SIPPEL: Well, yeah, it's in .

5 now because Mr. Kim has no objection to it.

6 So Comcast Exhibit 95 is identified and

7 received as Comcast 95. Thank you.

8 (The document referred to having

9 been previously marked as Comcast

10 Exhibit Number 95 for

11 identification was received in

12 evidence.)

13 MR. KIRK: And, Your Honor, I

14 would also like to move Comcast Exhibit 110,

15 Deposition excerpts, that we were talking

16 about into evidence.

17 MR. KIM: Objection, Your Honor.

18 JUDGE SIPPEL: Objection?

19 MR. KIM: Yes. This testimony

20 today is what matters. The only way you could

21 admit deposition transcripts is if it

22 impeaches or is inconsistent with his prior



1 testimony. It was not.

2 JUDGE SIPPEL: That's a good --

3 Technically, Mr. Kim is right. However, I  
4 think I have been using a practice in this.  
5 Again, it's for purposes of ease of review.

6 MR. KIM: The only other problem I  
7 have, Your Honor.

8 JUDGE SIPPEL: Go ahead.

9 MR. KIM: He cited about ten lines  
10 maybe of 60 pages.

11 JUDGE SIPPEL: I know. Yes.

12 MR. KIM: And I won't know -- Just  
13 so we have parity, we attempted to move them  
14 all in the beginning. They objected. We  
15 withdrew because we understand the rules. But  
16 it's got to be a two-way street. I mean they  
17 can't then stick in 60 pages of a deposition  
18 transcript when it hasn't even been used to  
19 cross examine the witness. Certainly, no  
20 impeachment has been perfected.

21 JUDGE SIPPEL: You know we did the  
22 last -- I'm losing track of my cases.

1                   MR. KIRK: I'll withdraw the  
2 request, Your Honor.

3                   JUDGE SIPPEL: We took the --  
4 Okay. Well, I'll just have this for future  
5 reference. We took pages out, specific pages  
6 out, so that it was clear to be able to follow  
7 the transcript for clarity sake and that was  
8 again because we were in an expedited  
9 proceeding.

10                  MR. KIM: And I appreciate --

11                  JUDGE SIPPEL: We do more work so  
12 we can expedite it.

13                  MR. KIM: I appreciate all that,  
14 Your Honor, and again if there were any  
15 impeachment that would perfect it, I would  
16 have no objection because that's the way you  
17 prove impeachment.

18                  JUDGE SIPPEL: Sure.

19                  MR. KIM: But I don't believe  
20 there was an impeachment.

21                  JUDGE SIPPEL: No. We're not into  
22 that yet. But okay. Anyway, this is all

1 cleared up. Mr. Kirk said he's withdrawing  
2 it. So off we go.

3 MR. KIM: Thanks to all.

4 BY MR. KIRK:

5 Q Did Comcast ever add MASN to  
6 systems not listed on Schedule A?

7 A I heard that they did, yes.

8 Q Do you know how many subscribers  
9 were covered by those listings?

10 A I honestly don't recall the  
11 number. I mean if there's something you can  
12 show me. I don't have a recollection.

13 Q Are you familiar with the ad  
14 discretion clause in the agreement?

15 A Yes sir.

16 Q Okay. Did that clause give each  
17 excluded system the right to launch MASN  
18 pursuant to the terms of the agreement?

19 A It gave Comcast the right to  
20 launch the Adelphia system, those 150,000  
21 Adelphia subscriber systems once they'd been  
22 upgraded and any additional systems that

1 Comcast might acquire during the term. That  
2 was the purpose of it.

3 Q Is there any reference to former  
4 Adelphia systems or future systems they may  
5 acquire in that clause?

6 A No, there is not.

7 Q So what's the basis of narrowing  
8 the clause as you've indicated?

9 A My conversation with Andy  
10 Rosenberg.

11 Q Has MASN ever approached Comcast  
12 personnel in the Harrisburg system to request  
13 carriage?

14 A I don't know personally if anybody  
15 has. I know we talked. Obviously, we had  
16 conversations with Mike Ortman, Matt Bond,  
17 Alan Dannenbaum, Hal Singer about carriage in  
18 Harrisburg, yes.

19 Q But did you talk to the system  
20 level folks in Harrisburg?

21 A I did not.

22 Q Do you know if anyone from MASN

1 did?

2 A You know I don't know. I would be  
3 speculating.

4 Q What about Roanoke/Lynchburg?  
5 Same question?

6 A My recollection is that Davida  
7 Shear I think she may have, but I don't  
8 recall. Around the time of this email that's  
9 Exhibit 95, I seem to recall that she had  
10 gotten some names of system GMs and maybe  
11 tried to contact them. But I don't know if  
12 she did or not.

13 Q And what about in Tri-Cities?

14 A I don't think so other than, you  
15 know, talking to -- starting at the top with  
16 Matt and Alan and Hal.

17 Q If I could turn you to paragraph  
18 30 of your direct testimony. You indicate  
19 that the reason Comcast gave for not launching  
20 MASN was because it was not required to do in  
21 excluded markets.

22 A Yes. That's what Alan Dannenbaum

1 told me over the phone the first day.

2 Q And what was the reason they felt  
3 they weren't required to do so?

4 A I'm trying to remember exactly  
5 what Alan said. He said --

6 Q Did they say it was because of  
7 2006 agreement?

8 A Yes, I think that was the deal.

9 Q You say in your testimony that  
10 Comcast was incorrect regarding their not  
11 being required to launch. Is that correct?

12 A Where are you? Just in general?

13 Q In general.

14 A Yes.

15 Q Okay. So are you saying that  
16 Comcast is required to launch MASN in  
17 Harrisburg, Roanoke/Lynchburg and Tri-Cities  
18 under the 2006 agreement?

19 A Yes.

20 Q Okay.

21 A They agreed to do that.

22 Q Leaving aside your understanding

1 of the negotiations leading up to the August  
2 2006 agreement, is there anything in the  
3 agreement that says they're required to launch  
4 in those areas?

5 A Well, the list of systems is  
6 incorrect. They left those names off.

7 Q Was Comcast --

8 A And I will tell you that had they  
9 told us they weren't launching those we  
10 wouldn't have gotten the deal done because we  
11 made it clear all along it had to be all  
12 systems and they knew that. There would not  
13 have been a deal done.

14 Q So that would have been a deal  
15 breaker.

16 A Absolutely.

17 Q Was Comcast required to launch  
18 MASN to the former Adelphia systems under the  
19 contract?

20 A We agreed that there would be  
21 150,000 subscriber worth of Adelphia systems  
22 that didn't have to launch initially.

1           Q       Are they required to launch those  
2       systems?

3           A       Well, what we said was that they  
4       would be at their discretion, but their  
5       discretion is not unfettered. They're covered  
6       by whatever applicable FCC laws and other laws  
7       may apply.

8           Q       You mentioned in your summary of  
9       your testimony the discussions and  
10      negotiations with Charter, correct?

11          A       You mean in Exhibit?

12                   JUDGE SIPPEL: Where are we?

13                   MR. KIRK: That's 230 in your  
14      testimony. If I could refer you to paragraph  
15      eight.

16                   THE WITNESS: Thanks. I  
17      appreciate that.

18                   BY MR. KIRK:

19          Q       Would you read that paragraph  
20      aloud please?

21          A       "I participated in negotiations  
22      with Charter to carry MASN in the fall of 2005



1 as the first major cable multi-system operator  
 2 MSO. To agree to carry MASN, Charter had  
 3 significant negotiating leverage. Charter had  
 4 made it clear from the outset that certain of  
 5 its systems could not launch MASN because of  
 6 technical constraints. Unlike Comcast,  
 7 Charter laid out on the table during  
 8 negotiations all the systems where it did not  
 9 intend to carry MASN. Charter never said that  
 10 it would not eventually launch MASN in those  
 11 unlaunched systems if the constraints were  
 12 eventually resolved. MASN periodically  
 13 communicates with Charter to learn the status  
 14 of those technological updates."

15 Q Thank you. With regard to former  
 16 Adelphia, didn't Comcast say it wasn't going  
 17 to launch due to low bandwidth and  
 18 technological issues?

19 A Yes. But unlike Charter, Comcast  
 20 also didn't include systems on Exhibit A that  
 21 it didn't intend to launch. They left them  
 22 off. That's the distinction we're making

1 here.

2 Q You lost me there. Could you  
3 repeat what you just said?

4 A Okay. They left off systems that  
5 were supposed to be on Exhibit A according to  
6 Matt.

7 JUDGE SIPPEL: Are you talking  
8 about Schedule A?

9 THE WITNESS: Yes, Schedule A.  
10 Sorry. Yes, systems were supposed to be on  
11 Schedule A that were supposed to be launched.

12 BY MR. KIRK:

13 Q Okay. And in your testimony you  
14 say "Charter never said that it would  
15 eventually launch MASN in those unlaunched  
16 systems if those constraints were eventually  
17 resolved." Correct?

18 A Charter never said -- That's  
19 correct.

20 Q I just want to change one word and  
21 see if you think I'm accurate. Comcast never  
22 said that it would eventually launch MASN in

1     those unlaunched systems if those constraints  
2     were eventually resolved.

3             A       That's two words.

4             MR. KIM:   I'm going to object.

5             THE WITNESS:   That's two words.

6             JUDGE SIPPEL:   Hold on.   Let's get  
7     to their objection here.   What's the  
8     objection?

9             MR. KIM:   The objection is he's  
10    reading the sentence but he left the word  
11    "not" out which changes the entire sentence  
12    180 degrees.

13            THE WITNESS:   Yes.

14            JUDGE SIPPEL:   All right.   Let's  
15    try it again.

16            MR. KIRK:   All right.

17            BY MR. KIRK:

18            Q       Charter said that it would not  
19    eventually launch MASN --

20            MR. KIM:   Charter never said.

21            MR. KIRK:   I'm sorry.   He didn't  
22    write it that well.   It's an awkward subject.

1 That's why I'm having problems. It's another  
2 double negative.

3 BY MR. KIRK:

4 Q Would the same be true if I  
5 substituted Comcast for Charter in that  
6 sentence?

7 A Now let me figure that one out. I  
8 think the same would be true with respect to  
9 the Adelphia 150,000 subscriber systems.  
10 Comcast never said that it would not  
11 eventually launch MASN in those unlaunched  
12 systems if those constraints were eventually  
13 resolved. I think that's accurate.

14 Q Okay.

15 A I think.

16 Q So are technological issues a  
17 valid business justification for not carrying  
18 MASN?

19 A I think in this instance yes.

20 Q And for Comcast?

21 A We agreed that Comcast didn't have  
22 to launch those 150,000 subscriber Adelphia

1 systems immediately because of those  
2 technological difficulties. So yes.

3 Q Would lack of demand also be a  
4 valid business justification for not carrying  
5 MASN?

6 A I assume so.

7 Q Based on your experience with  
8 RSNs, do cable operators' assessment of demand  
9 for programming often differ from the views of  
10 the programmer?

11 A I'm really not sure how to answer  
12 that. Obviously, if they don't want to pay  
13 for it, then maybe that's a different view.  
14 Is that what you're asking?

15 Q Based on your experience, do cable  
16 systems often complain that MASN's rates are  
17 too high?

18 A There are -- I've heard operators  
19 say that they cannot affiliate because of the  
20 price. Yes.

21 Q And is that a valid business  
22 reason for not affiliating?

1           A       If it's true, I assume so.

2           Q       After the agreement between  
3 Comcast and MASN was executed on August 4,  
4 2006, were any changes made to the agreement?

5           A       Oh, I know what you know. Yes, as  
6 a matter of fact, I mentioned we had agreed  
7 with Comcast that we would do a ten percent,  
8 excuse me, a five percent reduction across the  
9 board and they did the calculation on what the  
10 fees would be and it was carried out to like  
11 four decimal places or something and Alan  
12 Dannenbaum called me on Monday or Tuesday  
13 afterwards and said, "Hey, we screwed on the  
14 rates on Zone 6 in Year 3" or something really  
15 minor and asked if we could make that, correct  
16 that, and I said, "Absolutely" because we all  
17 agreed what the deal was.

18          Q       Did MASN pose any changes to the  
19 term sheet at that time?

20          A       Not that I'm aware of. They may  
21 have still been tweaking the release but I  
22 don't know. I can't remember.

1           Q       So additional changes were made  
2   after the August 4, 2006 deadline for electing  
3   arbitration.

4           A       Yes. It was the right thing to do  
5   and Alan called and said, "Can you change  
6   this" and I said, "Of course."

7                   MR. KIRK: I have no further  
8   questions. Thank you, Mr. Gluck.

9                   THE WITNESS: Thank you.

10                  JUDGE SIPPEL: Does the Bureau  
11   have redirect?

12                  MR. SCHONMAN: Yes sir.

13                  JUDGE SIPPEL: Please do.

14                               EXAMINATION

15                  BY MR. SCHONMAN:

16           Q       Mr. Gluck, good afternoon. My  
17   name is Gary Schonman. I'm co-counsel for the  
18   Enforcement Bureau.

19           A       Nice to meet you.

20           Q       Nice to meet you, too. Mr. Gluck,  
21   you've been on the witness stand now for a  
22   little over an hour and a lot of your

1 testimony, most of your testimony, has been  
2 about the negotiations leading up to this  
3 contract and then about what was and was not  
4 necessarily in the contract. And my question  
5 for you is is it your belief that Comcast  
6 breached the contract that MASN signed or did  
7 MASN sign a contract that did not reflect the  
8 terms to which it orally agreed?

9 A I guess you're asking for a  
10 conclusion of law here.

11 Q I'm asking for your belief.

12 A Yes, I hear you. I think what  
13 happened, what we got, was an incomplete  
14 exhibit and so I guess we signed an agreement  
15 that wasn't correct.

16 Q Is it your belief that Comcast  
17 pulled a fast one over on MASN?

18 A In hindsight, I don't like to  
19 use those words, but yes.

20 Q What words would you use?

21 A I think they were misleading in  
22 what they were agreeing to do and they knew,



1 I honestly believe that they knew, that if  
2 they told us they weren't launching in every  
3 system within the territory that we would not  
4 have had a deal because we made it abundantly  
5 clear that it had to be every system in the  
6 market other than what we agreed to with  
7 respect to those 150,000 Adelphia subscribers.

8 Q So it all comes down to the  
9 contract.

10 A Well, you're asking me about the  
11 contract right now. That's what I'm talking  
12 about.

13 Q But this is a contract dispute,  
14 correct?

15 A No, not now. We went back to them  
16 in January of whatever, I guess, 2007 and  
17 said, "We want you to launch us in these  
18 systems that you didn't launch us in. You  
19 were obligated to. Will you launch us now?"  
20 And they've said, "No" unequivocally.

21 Q And had they included the  
22 information in Schedule A that you believe